Filed 10/7/14 In re T.G. CA1/5

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re T.G, a Person Coming Under the Juvenile Court Law.	
CONTRA COSTA CHILDREN AND FAMILY SERVICES BUREAU, **Plaintiff and Respondent,** **v.** **M.R.,** **Defendant and Appellant.**	**A141011** **(Contra Costa County Super. Ct. No. J1200939)**

MEMORANDUM OPINION[*]

Appellant, M.R., is the father of T.G-M. (Minor). Minor was the subject of a petition filed under subdivisions (b) and (j) of Welfare and Institutions Code section 300.[1] A detention/jurisdiction report prepared by respondent Contra Costa Children and Family Services Bureau (the Bureau) identified appellant as one of two alleged fathers of Minor.

The Bureau's disposition report stated that Minor and a sibling had been the subjects of a prior dependency case involving allegations of sexual abuse of Minor by appellant. With respect to the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et

[*] We resolve this case by a Memorandum Opinion pursuant to California Standards of Judicial Administration, Standard 8.1.

[1] All undesignated statutory references are to the Welfare and Institutions Code.

seq.), the report stated mother had no Indian ancestry and that the issue of paternal Indian ancestry was pending as to Minor because the Bureau had not had contact with the alleged fathers.

The juvenile court later adjudicated Minor a dependent child and ordered reunification services for mother.

In an August 2, 2013 status review report, the Bureau stated appellant had informed the social worker he would attend the status review hearing and request paternity testing. The report also stated ICWA documents had been mailed to the alleged fathers. Although the report said the Bureau had not had contact with the alleged fathers, it also said appellant had told the social worker by telephone he did not have Indian ancestry. On August 5, 2013, appellant filed a Judicial Council Form No. ICWA-020 with the juvenile court indicating he was or may be eligible for membership in the Chickasaw tribe. That same day, appellant filed a statement regarding parentage in which he said he believed he was Minor's father, and on the form, he checked the box requesting blood testing. He also requested presumed parent status as to Minor. The juvenile court then ordered paternity testing and appointed counsel for appellant.

Appellant's counsel appeared at the October 3, 2013, status review hearing and requested waiver of appellant's presence. Counsel later requested leave not to attend the remainder of the hearing because appellant, as an alleged father, had no right to participate. The court granted the request. It subsequently terminated reunification services to mother and set a section 366.26 hearing.

In December 2013, appellant's counsel below filed a section 388 petition to change the court's prior dispositional orders. He requested that appellant be granted presumed father status and that he receive reunification services. The space on the form for indicating the child's Indian tribe was left blank. The juvenile court held a hearing on appellant's petition on January 27, 2014. It took judicial notice of the prior dependency proceeding in which the court had found true the allegations of appellant's sexual abuse of Minor. After hearing testimony from appellant, it granted his request for presumed

father status, but denied his request for services and visitation based upon the true findings of sexual abuse in the prior dependency case.

Appellant filed a timely appeal from the juvenile court's order.

" 'The determination of a child's Indian status is up to the tribe; therefore, the juvenile court needs only a suggestion of Indian ancestry to trigger the notice requirement.' . . . [¶] . . . If the court or the [Bureau] 'knows or has reason to know that an Indian child is involved, the social worker . . . is required to make further inquiry regarding the possible Indian status of the child, and to do so as soon as practicable, by interviewing the parents, Indian custodian, and extended family members . . . contacting the Bureau of Indian Affairs . . . the tribes and any other person that reasonably can be expected to have information regarding the child's membership status or eligibility.' (§ 224.3, subd. (c); Cal. Rules of Court, rule 5.481(a)(4).) . . . [¶] . . . '[T]he issue of ICWA notice is not waived by parent's failure to first raise it in the trial court.' " (*In re Gabriel G.* (2012) 206 Cal.App.4th 1160, 1165-1166.)

Appellant's opening brief in this court contends we must reverse the order from which the appeal is taken because the Bureau failed to follow ICWA notice requirements. He points out that there is nothing in the record showing the Bureau ever acted upon the ICWA notice form he executed below. The Bureau does not disagree. On August 7, 2014, deputy county counsel filed with this court a letter in lieu of respondent's brief. In the letter, the Bureau "concedes that the failure to notice the Chickasaw tribe is error." The Bureau thus does not dispute that there was a suggestion of Indian ancestry sufficient to trigger the notice requirement, and with admirable candor, it acknowledges it erred in failing to give ICWA notice.

Although the Bureau concedes error, it disagrees that reversal is required. It argues that because appellant does not contend he would have obtained a more favorable result on his section 388 petition in the absence of the ICWA error, the proper remedy is not reversal of the juvenile court's order denying the petition. Instead, it contends we should order a limited remand to the juvenile court solely for the purpose of ensuring compliance with ICWA. We agree.

By raising only the ICWA claim, appellant has conceded that the order denying his section 388 petition is otherwise supported. (See *In re Christian P.* (2012) 208 Cal.App.4th 437, 452 ["Mother neither argued nor pointed to any facts that support the conclusion that she would have obtained a more favorable result in the absence of the error. Therefore, rather than reversal, the proper remedy here is a limited remand to allow DCFS to comply with ICWA, with directions to the trial court that depend on the outcome of such notice."].) We will therefore follow *In re Christian P.* and remand the case to the juvenile court for the sole purpose of allowing the Bureau to comply with ICWA.

DISPOSITION

The order from which the appeal is taken is affirmed and the matter is remanded for the limited purpose of directing the trial court to order the Bureau to comply with the notice provisions of ICWA and to file all required documentation with the trial court for its inspection. If, after proper notice, a tribe claims Minor is an Indian child, the trial court shall proceed in conformity with all provisions of ICWA. And Minor, Minor's parents, and the tribe may petition the trial court to invalidate any orders that violated ICWA. (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 188; 25 U.S.C. § 1914.) If, on the other hand, no tribe makes such a claim, the prior defective notice becomes harmless error.

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Jones, P.J.

We concur:

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Needham, J.

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Bruiniers, J.